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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Common Carrier Bureau Seeks )  
Comment On North American )  
Numbering Council Letter )  
Seeking Clarification of the )  
Term "Technology Neutral" )

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To: Chief, Common Carrier Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: October 29, 1997

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To: Chief, Common Carrier Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Public Notice of the Federal Communications Commission ("Commission"),<sup>1/</sup> Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the definition of the term "technology neutral" in the context of area code exhaust proceedings.

In the August 22, 1997 Letter from the North American Number Council ("NANC") to the Chief of the Common Carrier Bureau, the NANC states there appears to be some confusion over the Commission's use of the term "technology neutral," particularly in the context of "number pooling" proposals, i.e., the assignment of telephone numbers under an NXX-X Location Routing Number ("LRN") number portability environment.

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<sup>1/</sup> Public Notice, "Common Carrier Bureau Seeks Comment On North American Numbering Council Letter Seeking Clarification of the Term "Technology Neutral," DA 97-2234, released October 20, 1997.

## II. BACKGROUND

### A. The Ameritech Order

In January 1995, the Commission first addressed the issue of technological neutrality in a Declaratory Ruling and Order, concluding that a proposed area code relief plan in the Chicago 708 Numbering Plan Area ("NPA") violated the Communications Act of 1934.<sup>2/</sup> Because the 708 code exhaust proposal, a wireless-only overlay area code, would have excluded wireless carriers from the existing 708 area code, thus segregating them into the new, unfamiliar (to customers) 630 area code, the Commission concluded that the proposal discriminated against a particular group of carriers in violation of Sections 201 and 202 of the Communications Act.<sup>3/</sup>

In the Ameritech Order, the Commission stated that:

"the timely availability of numbers is essential if new providers are to enter and new services are to appear in the telecommunications marketplace. For example, new wireless service providers and competitive access providers (CAPS) cannot offer new service without adequate access to new telephone numbers."<sup>4/</sup>

In reviewing the 708 area code exhaust proposal, the Commission stated that "regardless of the particular industry segment making the most requests for numbering resources at any particular time, Ameritech [as the Code Administrator] must treat all applicants for

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<sup>2/</sup> 47 U.S.C. Sections 151 et seq.

<sup>3/</sup> Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) ("Ameritech Order") at para. 28.

<sup>4/</sup> *Id.* at para. 19.

such codes in an impartial manner, providing telephone number resources in accordance with the Act."5/

Successful administration of the North American Numbering Plan ("NANP"), the Commission continued, "should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry segment or technology and by making numbering resources available on an efficient timely basis."6/ Assigning numbers "based on whether the carrier provides wireless service is not consistent with these objectives and could hinder the growth and provision of new beneficial services to consumers."7/

**B. Telecommunications Act of 1996**

In the Telecommunications Act of 1996 ("TCA"),8/ Congress codified the Commission's plenary jurisdiction over numbering matters in Section 251(e) of the Communications Act. Section 251(e) states that the Commission "shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."9/

In its Second Report and Order and Memorandum and Order implementing, among other things, Section 251(e), the Commission

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5/ *Id.* at para. 28.

6/ *Id.* at para. 29.

7/ *Id.*

8/ Pub. L. No. 104-104, 110 Stat. 56 (Feb. 9, 1996).

9/ 47 U.S.C. Section 251(e).

reaffirmed its decisions in the Ameritech Order.<sup>10/</sup> The Commission concluded therein that it would "retain its authority to set policy with respect to **all facets** of numbering administration to ensure the creation of a nationwide, uniform system of numbering. . ."(emphasis added)<sup>11/</sup> However, the Commission would allow states to implement area code exhaust plans as long as they complied with the following guidelines:

"(1) facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis;

(2) not unduly favor or disadvantage any particular individual segment or group of consumers; and

(3) not unduly favor one technology over another."<sup>12/</sup>

Additionally, the Commission explicitly prohibited all service-specific or technology-specific area code overlay plans since they "would exclude certain carriers or services from the existing area code and segregate them in a new area code."<sup>13/</sup> With respect to all-service overlays, the Commission found that they too would violate these guidelines unless they (a) included ten-digit dialing between and within area codes covered by the new code and (b) made available to all carriers, including Commercial

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<sup>10/</sup> Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) ("Second R&O").

<sup>11/</sup> *Id.* at para. 19.

<sup>12/</sup> *Id.* at para. 281.

<sup>13/</sup> *Id.* at para. 285.

Mobile Radio Service providers, at least one NXX in the existing area code.<sup>14/</sup>

This background establishes the context within which the NANC seeks guidance on the definition of "technological neutrality." The Commission has recognized that having "access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network."<sup>15/</sup> Therefore, in order to assure all carriers access to telephone numbers, the Commission requires that state code exhaust decisions must (1) facilitate efficient and timely entry into the communications marketplace; (2) not unduly advantage or disadvantage any industry segment or group of consumers; and (3) not unduly favor one technology over another.

### **III. DISCUSSION**

In seeking comment on the definition of "technology neutral," NANC is asking for guidance on application of these requirements in the context of code administration processes that were not directly before the Commission either at the time of the Ameritech Order or during the implementation of the TCA. Specifically, the NANC seeks Commission guidance on the implementation of number pooling, which assigns telephone numbers under an NXX-X Location Routing Number ("LRN") scheme, i.e., in blocks of 1,000 numbers, rather than in blocks of 10,000 numbers. All industry segments agree that these

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<sup>14/</sup> *Id.* at para. 286.

<sup>15/</sup> Second R&O at para. 261.

number pooling proposals will work only in a number portability environment. Due to this limitation, Nextel and other carriers find number pooling proposals -- including the Pennsylvania Public Utility Commission's current proposal for the 215, 717 and 610 area codes -- unacceptable since they are beyond the scope of state authority and would limit the assignment of numbers to those systems with local number portability capabilities, thus excluding wireless telecommunications systems.

A proposal to pool geographic telephone numbers in a local number portability environment is beyond the scope of state jurisdiction because it is a number administration and assignment process; not area code relief. The Commission expressly "retain[ed] its authority to set policy with respect to all facets of numbering administration. . ."<sup>16/</sup> State regulators were delegated only the authority to implement area code relief.<sup>17/</sup> Thus, state regulators, to the extent they are attempting to impose new numbering administration measures on a state-by-state basis, are beyond the bounds of their delegated authority.

Nextel recognizes that number pooling may have some administrative and efficiency advantages that should be studied. However, as the Industry Numbering Committee's ("INC") Initial Report to the NANC on Number Pooling ("INC Pooling Report") recognizes, the potential advantages of number pooling cannot be realized without certain network, operation and administrative

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<sup>16/</sup> *Id.* at para. 19; 47 C.F.R. Section 52.19.

<sup>17/</sup> *Id.*

modifications to carriers' systems; it may not prove to be desirable in all geographic areas; it would require the involvement of a neutral number administrator; and it must be available to all carriers, thus allowing them to interface with a number pool and obtain numbers using nationwide uniform standards.<sup>18/</sup>

Accordingly, Nextel believes that states may not adopt number pooling as a code exhaust solution prior to all industry segments having the technological capability to take advantage of number pooling (i.e., local number portability). Imposing number pooling prior to that time would violate the Commission's Second R&O guidelines governing code exhaust measures because numbers would not be available to those carriers without local number portability capabilities. A telephone number assignment mechanism that is knowingly unworkable on certain systems, e.g., wireless, is contrary to the Commission's requirement that all carriers have "fair and impartial access to numbering resources."<sup>19/</sup>

Nextel is a member of the NANC and supported the NANC's decision to request Commission clarification of the meaning of technological neutrality in the context of the Commission's area

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<sup>18/</sup> See INC Pooling Report, dated October 17, 1997, at Sections 3.3, 6.1.11, and 6.2. The INC Pooling Report is an initial response to the NANC's request for a comprehensive industry analysis and evaluation of the number administration and assignment process known as number pooling. At its October 21, 1997 open meeting, the NANC voted to transmit the INC Pooling Report to the Commission to provide it with a review of the issues involved with number pooling. NANC noted, however, that it is not the INC's final report and that the NANC has not recorded any final conclusions as to its contents.

<sup>19/</sup> Second R&O at para. 261.



code relief policies. NANC's request results from the difficult and often conflicting political, technical and administrative factors that many state PUCs are facing in light of the increasing frequency of telephone number shortages in the large metropolitan areas. These considerations, in combination with the unprecedented growth of competition in both the local loop and wireless industries, have led state PUCs to look for new ways to alleviate number shortages without the perceived consumer dislocations of traditional area code overlays or area code geographic splits.

Number pooling may offer a means to recover unused numbers in existing number block assignments and thereby make more efficient use of existing number resources. Nextel emphasizes, however, that this cannot be done piecemeal, with each state generating its own variant of number pooling or any other number administration mechanism without regard to the integrity of the overall North American Numbering Plan and the telephone network. This is precisely what Congress sought to avoid by vesting plenary authority over number administration in the Commission. The Commission's limited delegation to the states to resolve area code relief issues assumes that states are more familiar with local conditions and therefore better able to assess the relative impacts of area code splits versus overlays; it did not contemplate permitting individual states to revise central office code assignment and administration processes and objectives.

The NANC is in the process of considering number pooling and will be making recommendations as to nationally applicable

architecture, implementation and administration guidelines. Pending the outcome of this process, the Commission should clarify that any state decisions to implement number pooling, in lieu of necessary code relief, violate the requirements of technological neutrality, discussed above, unless they afford non-pooling capable carriers guaranteed access to additional numbers to meet consumer requirements.<sup>20/</sup>

#### IV. CONCLUSION

The Commission has concluded that telephone numbers must be assigned to all carriers without placing an undue burden on any particular technology or group of consumers. Any assignment proposal that unduly favors or burdens one type of technology over another or that assigns numbers in a manner that makes them operational on only limited types of telecommunications systems

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<sup>20/</sup> Thus, Nextel submits that the Pennsylvania PUC's Order violates the Commission's rules by (1) exceeding the scope of the state's authority over numbering matters and (2) imposing a plan that discriminates against wireless carriers. Once the code jeopardy was declared in Pennsylvania, the PUC had the responsibility -- under delegated authority -- to select, based on its knowledge of local conditions, either an all-service code overlay, a geographic split or an area code boundary realignment. See 47 C.F.R. Section 52.19. Nextel also suggests that an expanded all-service overlay is a permissible PUC approach to providing area code relief.

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does not fulfill the Commission's goal of a "technology-blind" number assignment methodology and should be rejected.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert S. Foosaner", written over a horizontal line.

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Date: October 29, 1997

## CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 29th day of October, 1997, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served hand-delivery to the following:

Jeanne Grimes  
Common Carrier Bureau  
Federal Communications Commission  
Room 235  
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Washington, D.C. 20554



Rochelle L. Pearson